No. 88-1897 (5)

In The

Supreme Court of the United States

October Term, 1989

Michigan Dept. of State Police and Col. R. T. Davis,
Director of the Michigan Dept. of State Police,
Petitioners,

v.

Rick Sitz, Joseph F. Young, Sr., Dominic J. Jacobetti,
Dick Allen, Keith Muxlow, and Jack Welborn,
Respondents.

On Writ of Certiorari to the Michigan
Court of Appeals

MOTION FOR LEAVE TO FILE A BRIEF AMICI CURIAE AND BRIEF OF AMICI CURIAE INSURANCE INSTITUTE FOR HIGHWAY SAFETY THE ALLIANCE OF AMERICAN INSURERS ALLSTATE INSURANCE COMPANY THE AMERICAN INSURANCE ASSOCIATION AMICA MUTUAL INSURANCE COMPANY FARMERS INSURANCE GROUP OF COMPANIES GEICO GROUP OF COMPANIES HARTFORD FIRE INSURANCE COMPANY LIBERTY MUTUAL GROUP LUMBERMENS MUTUAL CASUALTY COMPANY NATIONAL ASSOCIATION OF INDEPENDENT INSURERS NATIONWIDE MUTUAL INSURANCE COMPANY PRUDENTIAL PROPERTY AND CASUALTY INSURANCE COMPANY STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY THE TRAVELERS INDEMNITY COMPANY UNITED SERVICES AUTOMOBILE ASSOCIATION

In Support of Petitioners

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MOTION FILED
NOV 14 1989

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The Insurance Institute for Highway Safety (the Institute) hereby respectfully moves for leave to file a brief amicus curiae in support of petitioners in this case. The Institute is a nonprofit research and communications organization dedicated to reducing the property and human losses resulting from motor vehicle use. It is joined in its brief by several individual insurance companies and insurance trade associations who are among the Institute's supporters.

The Institute has requested the consent of counsel for both petitioners and respondents for the filing of a brief amicus curiae. Counsel for petitioners has consented. Counsel for respondents has refused his consent. The Institute offers the following reasons in support of its Motion.

INTERESTS OF AMICI CURIAE

The Institute has for many years worked to identify and develop ways of reducing motor vehicle crash losses--deaths, injuries, and property losses.

The Institute is supported by the principal property and casualty insurance companies. Institute research findings and publications are cited by academic, government, business, and other private sector organizations concerned with transportation safety both in the United States and abroad.

The individual insurance companies and insurance trade associations joining this brief have an economic and humanitarian interest in developing and implementing countermeasures to reduce the toll in human life and suffering paid in motor vehicle crashes.

Alcohol use and the part it plays in contributing to highway losses is the subject of a considerable body of research by the Institute and others. The effect of various measures aimed at deterring the alcohol-impaired driver, including use of sobriety checkpoints, is part of this research. The Institute submits that the data resulting from these studies which are unlikely to be

adequately treated by the parties, will afford the court objective information pertinent to balancing the personal and societal interests at issue.

The accompanying brief reviews the research pertinent to the use of sobriety checkpoints.

Respectfully submitted,

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In Support of Petitioners

INTERESTS OF AMICI CURIAE

The Insurance Institute for Highway Safety (the Institute) is a nonprofit research and communications organization, supported by the nation's property and casualty insurers, that identifies ways to reduce motor vehicle crashes and crash losses. One of the most important of the human factors contributing to highway deaths and injuries is alcohol-impaired driving. The Institute has supported seminal work on deterring the alcohol-impaired driver, including research at sobriety checkpoints, and has evaluated public opinion concerning such checkpoints.

Year after year motor vehicle crash deaths and injuries remain one of the most significant public health problems facing this country. Alcohol-impaired driving is one of the major factors contributing to serious motor vehicle crashes. The individual insurance companies and the insurance trade associations joining on this brief have a strong humanitarian as well as economic interest in reducing the carnage caused by alcohol-impaired driving. Accordingly, they support Petitioners in seeking reversal of the judgment below.

SUMMARY OF ARGUMENT

Alcohol-impaired driving is a serious public health problem that is resistant to simplistic solutions. One important means of reducing the incidence of alcohol-impaired driving is effective enforcement of alcohol-related traffic laws, which in turn deters potential offenders.

Studies show that the effectiveness of deterrence depends largely on the public perception that the risk of arrest is high. Sobriety checkpoints are minimally intrusive efforts that measurably increase the public's perception of the risk of apprehension for alcohol-impaired driving. At the same time, they can increase the actual risk of arrest. The Michigan Court of Appeals' holding that sobriety checkpoints do not generate a sufficient number of arrests to justify their use is contrary to the findings of research evaluating state implementation of such checkpoints.

The Fourth Amendment should not be construed to prevent police from using sobriety checkpoints as part of a state's enforcement program to apprehend and deter the alcohol-impaired driver.

ARGUMENT

I. ALCOHOL-IMPAIRED DRIVING IS A SERIOUS, WIDESPREAD CRIME THAT CAN BE DETERRED BY HIGHLY VISIBLE ENFORCEMENT PROGRAMS.

In 1986, three percent of a national sample of passenger vehicle drivers on weekend nights had blood alcohol concentrations (BAC) at or above 0.10 percent,[1] the level at which 46 states and the District of Columbia consider driving ability so impaired as to constitute a criminal offense.[2] These drivers represented 12 percent of all drinking drivers on weekend nights but 86 percent of the fatally injured drinking drivers.[3]

Alcohol impairment begins at low BACs and rises sharply as BACs increase.[4] Crash probability rises rapidly after 0.08 percent. At 0.15 percent, drivers are more than 50 times more

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[1] A. K. Lund and A. C. Wolfe, *Changes in the Incidence of Alcohol-Impaired Driving in the United States*, 1973-1986, Journal of Studies on Alcohol (in press 1989); Insurance Institute for Highway Safety, *1989 Alcohol Fact Sheet*, Arlington, VA.

[2] California, Oregon and Utah have established 0.08 percent BAC as the level at which it is illegal to operate a motor vehicle. In Georgia, it is 0.12 percent BAC. CAL. [Veh.] CODE § 23152(b) (Deering), as amended by 1989 Cal. Adv. Legis. Serv. Ch. 479 (Deering); OR. REV. STAT. § 813.010(1)(a) (1987); UTAH CODE ANN. § 41-6-44(1)(a) (1988); GA. CODE ANN. § 40-6-39(a)(4) (1987 Supp.).

[3] *Supra* note 1.

[4] H. Moskowitz, M. M. Burns, A. F. Williams, *Skills Performance at Low Blood Alcohol Levels*, 46 Journal of Studies on Alcohol 482 (1985).

likely to be involved in a fatal crash than drivers with BACs less than 0.02 percent. Drivers with BACs above 0.15 percent as a group are more than 380 times more likely to killed in a single vehicle crash on a weekend night than are nonimpaired drivers.[5]

There are no simple solutions to the problem of alcohol-impaired driving.[6] Alcohol is a legal drug that is widely used and easily obtained. The private motor vehicle has become the predominant mode of transportation in the United States. Some driving after alcohol consumption is inevitable.[7] The challenge to state highway officials is to reduce driving by those who are seriously impaired.

Survey data on the BACs of nighttime drivers show that alcohol-impaired driving is a pervasive crime.[8] Because it is impossible to arrest more than a relatively small proportion of offenders, deterrence is critical to efforts to reduce the problem of alcohol-impaired driving.[9] States are implementing a wide

[5] P. Zador, *Alcohol-Related Relative Risk of Fatal Driver Injuries in Relation to Driver Age and Sex*, Journal of Studies on Alcohol (in press 1989); *supra* note 1.

[6] Presidential Commission on Drunk Driving, *Final Report*, Washington, DC (1983). The Commission cautioned that no single element of the comprehensive program it outlined would have a lasting impact on the problem of alcohol-impaired driving. "[A] coordinated, decade-long commitment to a multifaceted approach must be taken by every State and community." The Commission recommended sobriety checkpoints as part of a law enforcement effort to apprehend and deter alcohol-impaired drivers.

[7] In 1986, a national sample of passenger vehicle drivers on weekend nights revealed that 26 percent had been drinking. Lund and Wolfe, *supra* note 1.

[8] *Supra* note 1.

[9] The Presidential Commission on Drunk Driving listed six key elements to combat alcohol-impaired driving. The fourth element described the legal component: "[I]n order to ensure that our laws play their proper role in discouraging the largest possible number of potential drunk drivers, States and localities should take a *general deterrence approach* in developing short-term remedies to the problem, with the focus on increasing the perception of risk of arrest." (Emphasis in original.) *Supra* note 6.

range of countermeasures using existing social, political, and educational means to persuade the public that alcohol-impaired driving should be socially unacceptable. Efforts such as laws raising the minimum drinking age to 21[10] have targeted specific subgroups. Laws against alcohol-impaired driving, however, are the foundation of all efforts to combat the problem.

The mere existence of these laws is not enough to deter the alcohol-impaired driver. The standard model of deterrence has three elements: a perception of the likelihood of detection and arrest;[11] the speed and certainty of punishment after arrest; and the severity of punishment.[12] Of the three elements, by far the most important is the public's perception of the risk of arrest. Where that is low, deterrent efforts inevitably fail, regardless of the severity of punishment for those few offenders who are apprehended.

II. CHECKPOINTS ARE EFFECTIVE IN DETERRING ALCOHOL-IMPAIRED DRIVING.

A. Sobriety Checkpoints Increase the Public's Perceived Risk of Arrest.

A 1984 Institute study published by the National Highway Traffic Safety Administration demonstrated that sobriety checkpoints and accompanying publicity are effective in increasing the public's awareness of the risk of being

[10] This Court recently upheld Congress' effort to reduce the alcohol-impaired driving problem among teenagers by encouraging states to adopt 21 as the minimum national drinking age. *South Dakota* v. *Dole*, 483 U.S. 203 (1987), upholding 23 U.S.C. § 158.

[11] Estimates of the actual risk of being arrested for alcohol-impaired driving vary from one in 200 to one in 2,000. R. K. Jones and K. B. Joscelyn, *Alcohol and Highway Safety 1978: A Review of the State of Knowledge*, U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, DC (1978); *Presidential Commission*, *supra* note 6.

[12] H. L. Ross, *Deterring the Drinking Driver: Legal Policy and Social Control*, Lexington Books, D. C. Heath and Co., Lexington, MA (1981).

apprehended for alcohol-related driving offenses.[13] The Institute compared public perceptions of the risk of being arrested for alcohol-impaired driving in two jurisdictions: Fairfax County, Virginia, which has a long history of serious enforcement and relatively high arrest rates and, Montgomery County, Maryland, a geographically and demographically similar jurisdiction with historically lower arrest rates. During the study period Montgomery County used well publicized sobriety checkpoints in its enforcement program, while Fairfax County relied on drinking-driver patrols that had little or no associated publicity.

Telephone surveys of licensed drivers over 18 years old revealed that public awareness of enforcement programs was far greater in Montgomery County than in Fairfax County, even though Montgomery County's arrest rate had been lower than Fairfax County's in all but the most recent year. Respondents from *both* counties incorrectly believed that the probability of arrest was higher in Montgomery County than in Fairfax County.[14]

Similarly, analysis of an enforcement program in British Columbia, Canada, illustrates both the effectiveness of sobriety checkpoints, in combination with publicity, and the potentially misleading nature of arrest rate statistics.[15] That study found that arrest rates and numbers of drivers passing through checkpoints were unrelated but that alcohol-related crashes declined with increased checkpoint activity and publicity. Arrest rates, in contrast, tended to go up when alcohol-related crashes were more frequent and to decline when crashes declined; thus

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[13] A. F. Williams and A. K. Lund, *Deterrent Effects of Roadblocks on Drinking and Driving*, 3 Traffic Safety Evaluation Research Review 7, U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, DC (1984).

[14] *Id.* at 13-14.

[15] G. W. Mercer, *The Relationships Among Driving While Impaired Charges, Police Drinking Driving Roadcheck Activity, Media Coverage and Alcohol-Related Casualty Traffic Accidents*, 17 Accident Analysis and Prevention 467 (1985).

arrest rates did not reflect the deterrent effects of checkpoint activity. The study also underlined the importance of media coverage of enforcement activities, as one checkpoint blitz held during a period of newspaper strikes failed to generate news stories and also failed to reduce alcohol-related crashes.

These studies show that in contrast to traditional patrol procedures, sobriety checkpoints are a highly visible means of enforcing alcohol-impaired driving laws that appreciably increase the public's perception of the risk of arrest. When that perception is low, a state reaps only a small general deterrent benefit from the extensive resources it devotes to its law enforcement, judicial, and administrative efforts to reduce the carnage caused by alcohol-impaired driving.

By concentrating its attention on the few offenders who are arrested in enforcement programs (through both sobriety checkpoints and traditional enforcement efforts), the courts below overlooked the advantage sobriety checkpoints have over traditional methods in deterring alcohol-impaired driving; they reach vastly greater numbers of people.[16] Every time police conduct a sobriety checkpoint, they come in direct contact with hundreds of drivers who either pass through the checkpoint or pass the checkpoint going in the opposite direction. There can be no mistaking a properly conducted sobriety checkpoint for

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[16] In Charlottesville, Virginia, sobriety checkpoint operations were used extensively from December 30, 1983 until December 31, 1984. During this period, 23,615 vehicles were stopped at the checkpoints. Assuming that a large number of these vehicles carried more than one occupant, thousands more people passed through the checkpoints and a similarly large number passed the checkpoints going in the opposite direction. R. B. Voas, A. E. Rhodenizer, and C. Lynn, *Evaluation of Charlottesville Checkpoint Operation: Final Report*, U.S. Department of Transportation, National Highway Traffic Safety Administration, Washington, DC (1985).

This evaluation is the most comprehensive study of the use of sobriety checkpoints in the reported literature. Although it was available prior to the trial of this case, the court did not have the benefit of its findings.

anything other than an enforcement effort aimed at alcohol-impaired driving.[17]

In contrast, when police stop an individual on suspicion of alcohol-impaired driving, passers-by have no reason to associate that stop with a specific enforcement program. Checkpoints by their very nature increase public awareness of the problem of alcohol-impaired driving, the possibility of an arrest, and the presence of an active enforcement program.

The Presidential Commission on Drunk Driving noted in its *Final Report* that on average, a uniformed officer makes only two arrests for alcohol-impaired driving each year.[18] The Commission recommended the use of sobriety checkpoints to raise the actual and the perceived risk of arrest.[19]

In short, the studies show that one of the principal advantages of sobriety checkpoints is their effectiveness as a deterrent. The courts below, by concentrating only on the number of arrests, unfairly focused on the wrong question during their balancing analysis.

B. Checkpoints In Fact Deter Alcohol-Impaired Drivers.

i. Widely publicized sobriety checkpoints affect drinkers' decisions regarding driving.

As part of the evaluation of the year-long sobriety checkpoint program in Charlottesville, Virginia, researchers

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[17] For safety reasons and to prevent the public from being unduly surprised or concerned about checkpoints, sobriety checkpoint guidelines require police to place conspicuous signs identifying sobriety checkpoints well ahead of the stopping areas. U.S. Department of Transportation, National Highway Traffic Safety Administration, *The Use of Safety Checkpoints for DWI Enforcement*, DOT HS 806-476, 13, Washington, DC (1983).

[18] Presidential Commission, *supra* note 6.

[19] "Recommendation--Selective Enforcement and Road Blocks. Police agencies should apply selective enforcement and other innovative techniques, including the use of preliminary breath testing devices and judicially approved roadblocks, to achieve a high perception of risk of detection for driving under the influence." Presidential Commission, *supra* note 6.

surveyed a representative sample of the local drinking establishments.[20] They interviewed managers and employees to obtain objective evidence of the public's response to the checkpoints. Eighty-five percent of the alcohol servers interviewed reported hearing customers discussing checkpoints.[21] Only 20 percent noted no change in patron drinking during the period that checkpoints were being conducted.[22] Sixty-five percent reported some customers were drinking less;[23] two out of three reported that patrons were increasing the use of designated drivers (patrons who agreed to drive drinking patrons and agreed to limit their own alcohol consumption or drink only non-alcoholic beverages).[24]

ii. Arrest rates are high but intrusion is low at sobriety checkpoints.

Although arrest rates should not be used as the only appropriate measure of the effectiveness of efforts to deter alcohol-impaired driving, they are an important component of a comprehensive program.[25] Properly conducted sobriety checkpoints can achieve significantly higher arrest rates than other enforcement methods.[26]

By comparing the number of alcohol-impaired drivers arrested to the number of all drivers passing through the checkpoints, the courts below seriously underestimated the arrest

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[20] Voas, *supra* note 16, at 35-37.

[21] *Id.* at 35.

[22] *Id.* at 36.

[23] *Id.*

[24] *Id.* at 37.

[25] Ross, *supra* note 11.

[26] R. B. Voas, *Enforcement Productivity and Impact: Checkpoints vs. Traditional Patrols*, Presented at the 11th International Conference on Alcohol, Drugs, and Traffic Safety, Chicago, IL (October 27, 1989); Voas, *supra* note 16, at 8.

rate achieved at the Saginaw, Michigan, sobriety checkpoint. The pertinent arrest rate is the rate for the number of alcohol-impaired drivers passing through the checkpoint. As shown above, three percent of weekend nighttime drivers have BACs at or above 0.10 percent.[27] The Charlottesville study shows one to two percent of the drivers passing through checkpoints are arrested for alcohol-impaired driving, and that is comparable to the rate experienced in Saginaw County.[28] A one to two percent arrest rate means that about one-third to two-thirds of alcohol-impaired drivers passing through checkpoints are being arrested. This is at least the equivalent of the arrest rate for traditional patrols.[29]

Arrest rates from sobriety checkpoints compare favorably to patrols by a second measure, the number of arrests per police manhour.[30] In the Charlottesville program, police achieved a higher arrest rate at the checkpoints than from patrols and the number of officer hours per arrest at checkpoints (6.5) was 20 percent lower than for patrols (7.9).[31]

This increased efficiency is achieved at a cost of only a minimal intrusion on individuals' time. The period drivers come in contact with police at checkpoints is typically short, averaging

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[27] *Supra* note 1.

[28] In Charlottesville, 1.2 percent of the drivers examined were arrested and an additional 1.6 percent were given "Advisories." These drivers had been drinking but their BACs were between 0.05 and 0.10 percent. Voas, *supra* note 16, at 4.

[29] Police commonly fail to identify alcohol-impairment in the drivers they stop. The ability of police to correctly identify alcohol-impaired drivers varies greatly. A. K. Lund and I. S. Jones, *Detection of Impaired Drivers with a Passive Alcohol Sensor*, Proceedings of the 10th International Conference on Alcohol, Drugs, and Traffic Safety, September 10, 1986, T-86, Elsevier Science Publishers B.V., Biomedical Division, Amsterdam (1987); M. R. Pagano and S. P. Taylor, *Police Perceptions of Alcohol Intoxication*, 10 J. of Applied Social Psychology 166 (1980).

[30] Voas, supra note 16.

[31] *Id.* at 8.

less than a minute in Charlottesville and just about 25 seconds at the checkpoint at issue here.[32]

In deciding whether sobriety checkpoints are facially unconstitutional, consideration should also be given to the means available to reduce the intrusion even further. Passive alcohol sensors, which provide officers with a scientifically valid and objective measure of the presence of alcohol in a driver's exhaled breath,[33] can improve the overall efficiency of the checkpoint.

Passive alcohol sensors used at some of the Charlottesville checkpoints increased both the number of drivers an officer could evaluate for alcohol impairment in a given time and the reliability of the evaluations. The checkpoint arrest rate for drivers with BACs at or above 0.10 percent increased from 45 to 68 percent when officers used the passive sensors.[34] Officers using the sensors correctly identified 80 percent more drivers with BAC's over 0.05 percent than they did at similar checkpoints working without the sensor.[35] The sensors also helped officers to more effectively identify nondrinking drivers

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[32] *Id.* at 4.

[33] Passive alcohol sensors have been developed to provide a reliable supplement to the officer's observations of drivers being investigated for possible alcohol-impairment. The passive sensors, when positioned in front of a driver's mouth, detect alcohol in the driver's exhaled breath. Models vary according to the detail of the readings they supply, but in general they provide an objective indicator of whether impairment testing is appropriate. An officer uses the sensor when the driver is speaking, usually answering the routine questions asked during a traffic stop or at a sobriety checkpoint. It is only necessary that the driver be speaking for the sensor to get optimum results; if the driver is not speaking, any result will underestimate either the presence or amount of alcohol, thus favoring the driver. M. Fields and A. R. Hricko, *Passive Alcohol Sensors--Constitutional Implications*, 20 The Prosecutor 45 (1986).

[34] I. S. Jones and A. K. Lund, *Detection of Drunk Drivers Using a Passive Sensor*, 14 Journal of Police Science and Administration 153 (1986); Voas, *supra* note 16, at 9.

[35] *Id.*, Jones and Lund.

and drivers with low BACs who did not need to be detained for investigation.

iii. Sobriety checkpoints raise the probability of arrest.

Traditional patrols do not put all alcohol-impaired drivers at risk of arrest. Alcohol-impaired drivers who, under nondemanding driving conditions, may not convey the appearance of impaired driving and alcohol-impaired drivers whose driving is erratic but unobserved by police patrols are not arrested. They only come to the attention of law enforcement officers if they are involved in a crash. Such drivers are at much greater risk of arrest at checkpoints.[36]

Young alcohol-impaired drivers, a subgroup of drinking drivers who are at greater risk of a crash,[37] are less likely to be arrested than older drivers even when they are at high BACs.[38] But the proportion of young drivers arrested at checkpoints is more reflective of their proportion in crashes than the proportion apprehended through other enforcement measures.[39]

Sobriety checkpoints extend the reach of enforcement to otherwise undetected offenders, enabling the state to use its resources against alcohol-impaired driving more effectively.

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[36] Not surprisingly, the average BAC of those arrested at checkpoints is lower than that of those arrested by patrols. It is likely that as BACs increase, an alcohol-impaired driver's ability to avoid erratic driving decreases. Voas, *supra* note 16, at 15-16.

[37] R. S. Karpf and A. F. Williams, *Teenage Drivers and Motor Vehicle Deaths*, 15 Accident Analysis and Prevention 55 (1983); A. F. Williams and O. Carsten, *Driver Age and Crash Involvement*, 79 American Journal of Public Health 326 (1989); U.S. Department of Transportation, National Highway Traffic Safety Administration, *Alcohol Involvement Rates in Fatal Crashes: A Focus on Young Drivers and Female Drivers*, DOT HS 807-184, Washington, DC (1987).

[38] R. B. Voas and A. F. Williams, *Age Differences of Arrested and Crash-Involved Drinking Drivers*, 47 Journal of Studies on Alcohol 244 (1986).

[39] Voas, *supra* note 16, at 16-18; Voas, *supra* note 26.

iv. Sobriety checkpoints reduce the incidence of alcohol-related crashes.

Evaluations of checkpoint programs in Virginia, Florida, New Jersey, and in New South Wales, Australia, have demonstrated that checkpoints are effective.

In New Jersey, checkpoints, along with two educational programs, were associated with a drop of 10 to 15 percent in single-vehicle nighttime crashes (a commonly used measure of alcohol-impaired driving). Moreover, the effect was not temporary, but lasted for several years.[40] Similarly, the year-long checkpoint program in Charlottesville, Virginia, was associated with a 13 percent reduction in alcohol-related crashes.[41] Use of sobriety checkpoints was accompanied by both fewer police reports of alcohol-involvement in nighttime crashes and a lower incidence of nighttime crashes. Similar results were obtained under a checkpoint program in Clearwater and Largo, Florida, which experienced a 12 percent reduction in alcohol-related crashes following checkpoint operations.[42]

The most dramatic results were reported in New South Wales, Australia, where alcohol-related fatal crashes dropped by an estimated 30 percent following introduction of widespread driver testing[43] and have remained low for four to five years.

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[40] D. Levy, D. Shea, P. Asch, *Traffic Safety Effects of Sobriety Checkpoints and Other Local DWI Programs in New Jersey*, 79 American Journal of Public Health 291 (1989).

[41] Voas, *supra* note 16, at 40-42, 46.

[42] J. Lacey, *Enforcement and Public Information Strategies for DWI General Deterrence: The Clearwater and Largo, FL Experience*, U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT HS 807-066, Washington, DC (1986).

[43] R. Homel, D. Carseldine, and I. Kearns, *Drink-Drive Countermeasures in Australia*, 4 Alcohol, Drugs and Driving 113 (1988). Australian results cannot be fully attributed to checkpoint operations because Australian police are permitted to randomly stop individual drivers to check for alcohol-impairment. Such stops are widely utilized in addition to sobriety checkpoints. Consequently, a third of the driver population is subjected to random breath testing each year. The Australian experience, however, strongly demonstrates

III. THE CONSTITUTION DOES NOT BAR STATES FROM USING CHECKPOINTS IN THEIR ENFORCEMENT PROGRAMS.

A. Sobriety Checkpoints Result in Minimal Inconvenience to the Public.

The checkpoint guidelines at issue are designed to assure that the inconvenience to the public is minimized.[44] Generally, such guidelines provide that checkpoint sites should be carefully chosen with a view to safety as well as arrest rates.[45] Proper checkpoint procedures allow for vehicles to be chosen randomly so that there are not long delays. For example, when heavy traffic threatens delays, police can apply a prescribed formula for choosing which drivers to stop, such as every fifth driver passing through the checkpoint.[46]

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the deterrent value of widespread, visible enforcement efforts in which police are able to evaluate drivers for alcohol-impairment.

Sobriety checkpoints in the United States could not be expected to achieve as great an effect as the Australian program. However, the Australian experience suggests that sobriety checkpoints should have a beneficial effect on reducing the incidence of alcohol-related crashes in the United States.

[44] A stated goal of the guidelines used by the police in this case was to conduct checkpoints "with a minimal amount of intrusion or motorist inconvenience." Petition for Writ of Certiorari, Guidelines, 146a.

[45] Locations for sobriety checkpoints are chosen according to criteria such as incidence of alcohol-related fatalities, nighttime injuries or nighttime single vehicle crashes.

The visibility of the checkpoint site to approaching drivers as well as the availability of space where drivers who require more than a cursory investigation can be directed are important safety factors that are taken into consideration in choosing checkpoint locations. U.S. Department of Transportation, *The Use of Safety Checkpoints for DWI Enforcement*, *supra* note 17, at 12.

[46] *Id.*

B. The Public Approves of Sobriety Checkpoints.

The lower courts agreed that sobriety checkpoints were not an objectively unreasonable intrusion because the public experienced only a short delay. But their finding of significant subjective intrusion is not consistent with research evidence. Surveys show widespread public support for sobriety checkpoints, not fear and surprise.

In a telephone survey to evaluate the Charlottesville, checkpoint program,[47] respondents were separated into two groups based on their answers to questions about their drinking and driving habits: those who were "at risk" for alcohol-impaired driving and those who were "not at risk." Eighty-seven percent of the "at risk" respondents either approved or strongly approved of the checkpoint operations,[48] as did 78 percent of a corresponding group from the comparison town, Blacksburg, Virginia, where checkpoints were not being used.[49] Of the "not at risk" respondents, 90 percent in Charlottesville and 88 percent in Blacksburg either approved or strongly approved of the checkpoints.[50]

The Charlottesville and similar surveys show not only that the public strongly supports sobriety checkpoints, but that checkpoints could be used regularly without eroding that support. Indeed, support is stronger where checkpoints have

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[47] Voas, *supra* note 16, at 19-34.

[48] *Id.* at 31.

[49] *Id.*

[50] The Charlottesville survey is consistent with an earlier Institute survey showing widespread public approval in Montgomery County, Maryland and in Delaware, which were using checkpoints, as well as in Fairfax County, Virginia and Maryland's Eastern Shore, comparison communities which were not using them. Eighty-five percent of the Montgomery County respondents thought "police should routinely set up roadblocks to detect drunk drivers." In Fairfax County, 79 percent of those surveyed supported sobriety checkpoints. Similarly, 86 percent of the Delaware respondents and 74 percent of the Maryland Eastern Shore respondents approved of checkpoints. Williams and Lund, *supra* note 13.

been used, suggesting that increased familiarity leads to increased support.[51]

In contrast to these objective studies, the courts below merely speculated about the public's fear of checkpoints.

The Institute submits that for checkpoints, the state's interest in arresting and deterring alcohol-impaired drivers is far greater than the interest in ensuring proper license and registration,[52] which this court found constitutionally acceptable in *Delaware* v. *Prouse*.[53]

CONCLUSION

The judgment of the Michigan Court of Appeals should be reversed.

Respectfully submitted,

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[51] Voas, *supra* note 16, at 31.

[52] Not only is alcohol-impaired driving a more immediate hazard to the public than unlicensed driving, there is evidence that drivers whose licenses have been suspended or revoked drive more carefully and less frequently as a result of their unlicensed status. R. C. Peck, D. D. Sadler, and M. W. Perrine, *The Comparative Effectiveness of Alcohol Rehabilitation and Licensing Control Actions for Drunk Driving Offenders: A Review of the Literature*, 1 Alcohol, Drugs,and Driving: Abstracts and Reviews 15 (1985).

Furthermore, unlicensed drivers and drivers whose licenses have been suspended or revoked are identified at sobriety checkpoints as well as alcohol-impaired drivers. The Charlottesville checkpoints generated more than 200 citations for license and vehicle registration violations. Voas, *supra* note 16, at 6.

[53] 440 U.S. 648 (1979).

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of November, 1989, I served the foregoing Motion for Leave to File a Brief Amici Curiae and Brief of Amici Curiae upon the parties by first class mail, postage prepaid to:

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